

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: WATSON GRINDING & MANUFACTURING CO. Debtors	§ § § § § § §	Chapter 11 Case No. 20-30967 (MI)
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In re: WATSON VALVE SERVICES, INC. Debtor.	§ § § § § § §	Chapter 11 Case No. 20-30968 (MI)
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**JANUARY 24 CLAIMANTS COMMITTEE'S EMERGENCY MOTION FOR
APPOINTMENT OF CHAPTER 11 TRUSTEES**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS MOTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

PLEASE NOTE THAT ON MARCH 24, 2020, THROUGH THE ENTRY OF GENERAL ORDER 2020-10, THE COURT INVOKED THE PROTOCOL FOR EMERGENCY PUBLIC HEALTH OR SAFETY CONDITIONS.

IT IS ANTICIPATED THAT ALL PERSONS WILL APPEAR TELEPHONICALLY AND ALSO MAY APPEAR VIA VIDEO AT THIS HEARING. AUDIO COMMUNICATION

WILL BE BY USE OF THE COURT'S REGULAR DIAL-IN NUMBER. THE DIAL-IN NUMBER IS +1 (832) 917-1510. YOU WILL BE RESPONSIBLE FOR YOUR OWN LONG-DISTANCE CHARGES. YOU WILL BE ASKED TO KEY IN THE CONFERENCE ROOM NUMBER. JUDGE ISGUR'S CONFERENCE ROOM NUMBER IS 954554.

PARTIES MAY PARTICIPATE IN ELECTRONIC HEARINGS BY USE OF AN INTERNET CONNECTION. THE INTERNET SITE IS WWW.JOIN.ME. PERSONS CONNECTING BY MOBILE DEVICE WILL NEED TO DOWNLOAD THE FREE JOIN.ME MOTION.

ONCE CONNECTED TO WWW.JOIN.ME, A PARTICIPANT MUST SELECT "JOIN A MEETING". THE CODE FOR JOINING THIS HEARING BEFORE JUDGE ISGUR IS "judgeisgur". THE NEXT SCREEN WILL HAVE A PLACE FOR THE PARTICIPANT'S.

**To the Honorable Marvin Isgur,
United States Bankruptcy Judge:**

The Official Committee of January 24 Claimants (the "Committee") files this *Emergency Motion for Appointment of Chapter 11 Trustees* (the "Motion").

SUMMARY

1. At the first day hearing, the Court immediately recognized that there were certain inherent conflicts of interest between the estates of Watson Grinding & Manufacturing Co. ("WGM") and Watson Valve Services, Inc. ("WVS"), and ordered that separate counsel be retained by each Debtor. Those conflicts continue to exist and have ripened to such a degree that the Committee believes the estates can no longer function without the appointment of independent fiduciaries.

2. John Watson is the majority owner of both WGM and WVS, but until the last two weeks all decision making authority for the Debtors rested in Bob White, the chief operating officer. To that end, Mr. White signed both Debtors' schedules and statements of financial affairs and appeared as the companies' representative at their meetings of creditors. This arrangement came to a screeching halt in Mid-May. Specifically, after employing an investment banker to explore a sale of WVS, John Watson struck a side deal with a prospective bidder, which provided

a \$1 million payment directly to Watson in the form of a “non-compete.” Thereafter, Bob White and his son submitted a competing *higher* bid through a newly formed entity to acquire WVS’s assets. Immediately upon learning of the competing bid, John Watson retaliated against Bob White and his son by terminating their employment with both Debtors, effectively removing Bob White as the estates’ representative and supplanting himself in those roles.

3. Since John Watson’s unilateral termination of Bob White and appointment of himself as the sole estate “fiduciary,” things have been amiss. The Debtors actions and approach to routine matters have been marred by delay, inconsistency and conflict. The Debtors’ counsel, who the Committee firmly believes is making every effort to ensure that the Debtors are exercising their fiduciary duties, are being asked to take positions that run directly contrary to the interests of the estates and pursue objectives that benefit insiders at the expense of creditors and fly in the face of the fiduciary responsibilities afforded estate representatives. In sum, the Committee believes that John Watson is incapable of fulfilling his fiduciary duties to the estates. Instead of maximizing the value of the estates, he is focused on maximizing his personal recovery and protecting his and his children’s interest. For the reasons set forth below, the Committee requests the Court appoint chapter 11 trustees in both the WGM and WVS cases.

BASIS FOR EMERGENCY CONSIDERATION

4. WVS filed an emergency motion seeking to provide significant bid protections to Mogas Industries, Inc. (“Mogas”) on less than 24 hours’ notice in order to protect the Mogas offer, which (as modified) includes a \$300,000 payment to him individually and employment for his son, from being outbid by the Whites who have submitted a competing bid to purchase WVS. Despite the fact that the motion for bid procedures was filed without Mogas having even submitted a signed APA, Mogas informed WVS late last night that it would withdraw its offer if WVS agreed to the

Committee's request to continue the hearing just one day to Friday, May 29th. At the hearing on the motion to approve bid procedures, the Court directed the United States Trustee to investigate whether a chapter 11 trustee should be appointed. Accordingly, emergency consideration of this Motion is appropriate.

JURISDICTION AND VENUE

5. This Court has jurisdiction over these cases pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue is proper in this district pursuant to 28 U.S.C. § 1408.

BACKGROUND

6. In the early morning of January 24, 2020, a tragic explosion occurred at the WGM thermal spray coating facility. As a result, numerous parties began filing lawsuits in state court against the Debtors arising out of the January 24 incident.

7. On February 6, 2020 (the "Petition Date"), the Debtors each commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (the "Bankruptcy Case"). Both the Debtors continue to operate their business and manage their properties as a debtor in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

8. On February 21, 2020, the United States Trustee for the Southern District of Texas (the "U.S. Trustee") appointed the Committee in the WGM case pursuant to sections 1102(a) and 1102 (b)(1) of the Bankruptcy Code. The Committee consists of the following claimants: (i) Travis Horton, (ii) Massiel Nunez, (iii) Houston Corvette Service, (iv) Margarita Flores, (v) Phillip Burnam, (vi) Janette Thomas, and (vii) Gerardo Castorena, Jr.

9. As the Court is aware, the Committee has been concerned with John Watson's involvement in this case since it discovered his role in modifying the "loss payee" designation on

the Debtors' insurance policies only days before the petition date—for the benefit of an entity owned by his children (KMHJ Ltd.).

10. Until recently, the Committee's concerns were partially alleviated by the Debtors' representation that John Watson was not involved in the day-to-day operation of the estates, Bob White was the designated "estate representative" and Drew McManigle was being retained as the Debtors' financial advisor. Consistent with these representations, Bob White, the Debtors' chief operating officer, signed the petitions, the statements of financial affairs, the schedules and the first day declarations for both Debtors. For all practical purposes, until recently, Bob White was the Debtors representative and was making substantially all decisions related to these bankruptcy cases.¹

11. On May 14, 2020, however, WVS received a letter of intent from Mogas to purchase WVS' assets which included a non-compete agreement to be executed by John Watson. The Committee has not seen this LOI, but, based on the JB Valve objection, John Watson would have directly received \$1 million from Mogas under this offer in exchange for executing the non-compete.

12. On May 15, 2020, WGM's counsel provided the Committee with a copy of an unexecuted asset purchase agreement for WVS' assets from JB Valve LLC ("JB Valve"), an entity created by Bob and Jason White for the purpose of attempting to acquire WVS' assets. JB Valve offered a substantially higher amount to be paid to the WVS estate than the Mogas bid, *and its offer did not involve any side agreement with John Watson*. To the contrary, the JB Valve bid seems premised on the Whites making a clean break with the Watsons.

¹ WGM is owned approximately 63.8% by John Watson and 36.2% by the Whites. WVS is owned 70% by John Watson and 30% by the Whites.

13. Immediately upon receipt of the JB Valve APA, on May 15, 2020, John Watson terminated the employment of Bob and Jason White from both Debtors in clear retaliation for having undermined the insider kickback associated with the original Mogus offer.

14. Since John Watson's unilateral termination of the Whites, and self-promotion to "estate representative," the Debtors have pivoted dramatically on numerous important issues in these cases. First, the Debtors and the Committee were in the process of negotiating non-controversial motions related to bar date noticing, procedures for allowing lawsuits to serve as proofs of claim and related relief to ensure efficiencies and due process in these cases. Until days ago, these motions appeared to be largely agreed to by the Debtors and, in fact, were going to be filed as joint motions. However, on the eve of filing the motions, John Watson and his counsel interjected themselves into the negotiations and demanded modifications clearly aimed at limiting notice and potential claims against WVS. The only logical explanation for such requests is John Watson's belief that directing claims away from WVS and towards WGM increases the likelihood of a "surplus" in the WVS estate—which directly benefits him personally.

15. By way of further example, the Debtors previously filed a Motion to Pay Watson Grinding Receivables Collected on Watson Grinding's Behalf seeking authorization WVS to pay \$515,494.12—an amount which was paid to WVS by a customer for work performed by WGM. This motion was filed at a time when Bob White was still in control of the Debtors. Following White's termination by John Watson, WVS' counsel notified the Committee's counsel that John Watson was threatening to inexplicably withdraw the motion because John Watson did not want the funds to be transferred out of WVS to WGM. While counsel appears to have talked John Watson out of this position (the Court entered an order granting the Motion on May 27, 2020), this

is a further example of Debtors' counsel continued struggles to ensure a clearly conflicted estate representative is fulfilling his fiduciary duties.

16. Finally, just before 1:00 p.m. on May 27, 2020—and apparently at John Watson's direction, WVS filed an emergency motion seeking approval of bid procedures and bid protections for Mogas on a modified LOI (Doc. No. 183) (the "Bid Procedures Motion"). According to footnote 1 in the Bid Procedures Motion, Mogas had not yet submitted a signed APA to WVS when the motion was filed. The Bid Procedures Motion was set on less than 24 hours' notice for 8:30 a.m. on May 28, 2020.

17. The Committee's counsel immediately requested WVS to continue the hearing for at least one day so the Committee could evaluate the motion and the parties could continue to negotiate potential global case resolutions less drastic than the appointment of a chapter 11 trustee, such as limiting and terminating exclusivity. WVS' counsel originally agreed to continue the hearing and informed the Court's case manager of this decision. Later that evening, WVS' counsel informed the Committee's counsel that WVS could not agree to continue the hearing because Mogas threatened to pull its offer unless WVS went forward on the Bid Procedures Motion at 8:30 a.m. on May 28, 2020.

18. The Bid Procedures Motion seeks approval of an APA with Mogas (which no party in interest has seen and was not even included in WVS' exhibit list for the hearing) and bid protections for Mogas in the form of a \$100,000 break-up fee, a \$75,000 expense reimbursement, and a \$50,000 minimum initial overbid. The Bid Procedures Motion discloses that Mogas' offer includes \$300,000 to be paid to John Watson personally in exchange for a non-compete and a consulting agreement for an undisclosed sum for John Watson Jr. (Doc. No. 183 at p. 12).

RELIEF REQUESTED

19. Bankruptcy courts will leave a debtor in possession of its assets and business only when current management “can be depended upon to carry out the fiduciary responsibilities of a trustee.” *See Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 355 (1985). The Court can appoint a trustee either based on a finding of cause (11 U.S.C. § 1104(a)(1)) or based on it being in the interest of creditors (11 U.S.C. § 1104(a)(2)). Although section 1104(a)(1) expressly identifies four bases upon which “cause” may be found—fraud, dishonesty, incompetence and gross mismanagement—these enumerated grounds are not exhaustive, merely illustrative. *See, e.g., In re Cajun Elec.*, 191 B.R. at 661 (“It is clear that the grounds for cause are not limited to those enumerated in section 1104(a)(1).”).

20. The determination of whether cause exists to appoint a chapter 11 trustee is highly fact-intensive and requires the court to consider “whether the totality of the circumstances warrant appointment of a trustee.” *In re Sundale, Ltd.*, 400 B.R. 890, 900 (Bankr. S.D. Fla. 2009) (citing *In re Sharon Steel Corp.*, 871 F.2d 1217, 1228 (3d Cir. 1989)). Even if the Court does not find that “cause” exists to appoint a chapter 11 trustee under section 1104(a)(1), the Court has wide discretion to appoint a trustee under section 1104(a)(2) where, as here, doing so is in the best interests of the parties and the estate. *See also In re Cajun Elec. Power Cooperative, Inc.*, 191 B.R. 659, 661 (M.D. La. 1995) (“[u]nder [section 1104(a)(2)], there is a flexible standard for the Court to follow”).

21. In exercising its discretion to appoint a trustee under section 1104(a)(2), the Court may consider many factors, including: (i) the trustworthiness of the debtor; (ii) the debtor in possession’s past and present performance and prospects for the debtor’s rehabilitation; (iii) the confidence, or lack thereof, of the business community and of creditors in present management; and (iv) the benefits derived by the appointment of a trustee, balanced against the cost of the

appointment. *See, e.g., In re Cajun Elec.*, 191 B.R. at 661-62 (listing factors); *In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 168 (Bankr. S.D.N.Y. 1990) (same).

22. The totality of circumstances, as articulated above, evidence that John Watson is not capable of fulfilling his fiduciary duties and is putting his personal and familial interests ahead of the interests of creditors. From the Committee's standpoint, the Court need only look at John Watson's immediate and unilateral termination of Bob White as the estates' representative upon his submission of a competing/superior bid that did not provide a \$1 million kickback to John Watson personally. This alone establishes that John Watson simply does not have the estate's interests in mind and is willing to retaliate against anyone who gets in the way of his personal agenda. John Watson's motivations are further evidenced by both his and his counsel's attempts at thwarting the legitimate objectives of estate professionals for John Watson's personal benefit. The Committee is concerned, based on extensive communications with Debtors' counsel, that estate professionals are being placed in the untenable position of answering to a client representative whose interests are not aligned with the fiduciary responsibilities of the Debtors. Given the state of the Debtors' business, the likely sale of the Debtors' only operating assets and the millions of dollars of claims asserted against the estates, John Watson cannot be left in charge.²

CONCLUSION

23. Accordingly, the Committee respectfully requests that the Court enter orders appointing chapter 11 trustees in both cases and grant the Committee any other relief to which they may be entitled.

² As further indication of the inherent conflicts existing between the two estates, on May 8, 2020, WGM's insurance defense counsel sent a demand letter to WVS' insurance defense counsel stating WGM's position that it is a named insured under \$26 million of WVS insurance policies. To date, the insurance companies have not responded to the tender letter. If they deny coverage, WGM may have to assert claims against WVS and also file an action for declaratory relief against the insurance companies and WVS to have this Court determine the coverage issue.

Dated: May 29, 2020.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Committee counsel discussed the Motion and the relief sought with counsel for both Debtors prior to filing this Motion. The Debtors informed the Committee that they intend to promptly convene a board meeting following the filing of this Motion to determine the Debtors' position on the Motion.

/s/ Aaron J. Power

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CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing document was forwarded by U.S. First Class Mail and via electronic transmission to all registered ECF users appearing in the case on May 29, 2020.

/s/ Joshua W. Wolfshohl

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OLDHAM A/K/A TELEDYNE GAS & FLAME
AMERICAS – THE WOODLANDS
DETCON INC
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ACCUWELD INC.
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MATHESON TRI-GAS, INC.
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PARISH INTERNATIONAL, INC.
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